



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND
1333 ISAAC HULL AVENUE
WASHINGTON NAVY YARD DC 20376-2101

IN REPLY REFER TO

5720

Ser SEA 00A5/DON-NAVY-2017-005940ATD

July 19, 2017

Mr. Craig Whitlock
The Washington Post
1301 K Street, NW
Washington, DC 20071

SUBJECT: YOUR FREEDOM OF INFORMATION ACT CASE DON-NAVY 2017-005940

Dear Mr. Whitlock:

This is a final response to your May 1, 2017, Freedom of Information Act (FOIA) request in which you seek a copy of all reports of investigation by fleet-wide Inspector General offices that have substantiated misconduct allegations since March 1, 2016.

I considered your request under the FOIA (5 U.S.C. 552), as amended, and the Secretary of the Navy Instruction 5720.42F. After reviewing your request, the FOIA exemptions and the instruction, I am denying your request in full under exemption b(5).

Exemption b(5) protects agency decision-making processes by allowing agencies to withhold pre-decisional and deliberative process information. Your request seeks Inspector General reports that have substantiated misconduct. Answering your request, even with redactions, would reveal pre-decisional and deliberative process information since the conclusions, recommendations, and opinions in those reports are simply part of the decision making process rather than the final decision. Essentially, there is no way to answer your request without revealing information that should be withheld, in this case, at a minimum, whether the Inspector General substantiated the allegations. Revealing such information would harm the decision-making process since it would negatively impact the Inspector General's ability to provide candid recommendations in the future.

Additionally, as law enforcement records, portions of the reports would be redacted under exemptions b(6) and b(7)(C) which protect personal privacy.

Exemption (b) (6) requires withholding of information in files where disclosure "would constitute a clearly unwarranted invasion of personal privacy." In applying Exemption 6, a balancing test must be done, weighing the privacy interests of the individuals named in a document against the public interest in disclosure of the information requested. The public interest in disclosure is one that will "shed light on an agency's performance of its statutory duties." Dep't of Justice v. Reporters Committee, 489 U.S. 749, 773 (1989). In this request, all material that is covered by Exemption 6 is also covered by Exemption 7(C).

The threshold requirement in any Exemption 7 inquiry is whether the documents were compiled for law enforcement purposes, that is, as part of or in connection with an Agency law enforcement proceeding. F.B.I. v. Abramson, 456 U.S. 615, 622 (1982). A "record compiled for law enforcement purposes" is much broader than simply looking at whether the office that created/obtained/used the record is an office that traditionally enforces the law. So, for instance, a commander directed inquiry report, professional responsibility investigation report, or other report investigating alleged misconduct, discipline, or enforcement of rules are considered "records compiled for law enforcement purposes." The responsive records you seek are properly considered records compiled for a law enforcement purpose. Accordingly, withholding information in the record under Exemption 7 and its subparagraphs is required, as appropriate.

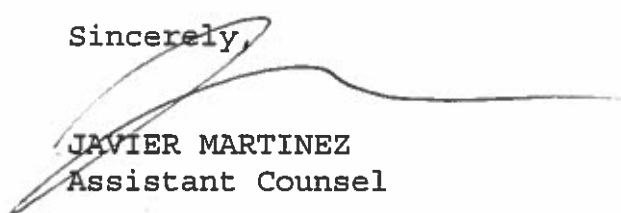
FOIA Exemption 7(C), 5 U.S.C. § 552(b) (7) (C), is broader than the privacy standard of FOIA Exemption 6, but only protects privacy information contained in records compiled for a law enforcement purpose. Exemption 7(C) requires withholding of records or information compiled for law enforcement purposes, where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

I am the official responsible for the denial of your request. You may submit a written administrative appeal of my decision to the Department of the Navy, Office of the General Counsel, 1000 Navy Pentagon, Washington, DC 20350. If you decide to file an appeal, it must be received within 90 calendar days from the date of this letter. If you file an appeal, attach a copy of this letter to the appeal and mark the appeal letter and the envelope FREEDOM OF INFORMATION ACT APPEAL. Mail the original appeal to the Department of the Navy, Office of General Counsel, 1000 Navy Pentagon, Washington, DC 20350. Mail a copy of your appeal to the Commander, Naval Sea Systems Command (SEA 00A5), 1333 Isaac Hull Avenue, SE, Washington Navy Yard, DC 20376-1021.

Fees for processing your request have been waived in this instance since we were unable to respond to your request within 20 working days. However, be advised that you may be charged for future requests.

If you have any questions concerning the processing of your request, please contact Ms. Ginger Dolan at 202-781-3359.

Sincerely,



JAVIER MARTINEZ
Assistant Counsel